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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 160.

THE NORTHERN PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

ABNER TOWNSEND, MINERVA TOWNSEND, AND JOSEPH HOLECEK.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED SEPTEMBER 6, 1901.

(18,260.)

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1 STATE OF MINNESOTA:

Supreme Court.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECEK, Defendants in Error.

Now comes the above-named Northern Pacific Railway Company, a corporation, plaintiff in error, and prays that a writ of error in the above-entitled case may issue to said the supreme court for the State of Minnesota to review a certain judgment entered in said court on the 26th day of July, 1901, in favor of the said Abner Townsend, Minerva Townsend and Joseph Holecek, defendants in error, and against the said Northern Pacific Railway Company, plaintiff in error, directing the district court for Wadena county, Minnesota, to enter judgment in favor of said defendants in error and to dismiss the complaint of said Northern Pacific Railway Company, plaintiff in error, for the reason that manifest error hath intervened in the rendition of said judgment of said supreme court of Minnesota to the great damage of said plaintiff in error; all of which will more in detail appear in the assignment of errors which is filed with this petition.

NORTHERN PACIFIC RAILWAY COMPANY, *Plaintiff in Error,*

2 By C. W. BUNN &
JAMES B. KERR, *Its Attorneys.*

Dated, July 26th, 1901.

(Endorsed:) State of Minnesota. Supreme court. N. P. R'y Co. pl'ff in error, *vs.* Abner Townsend *et al.* def'ts in error. Petition for writ of error. C. W. Bunn and James B. Kerr att'ys for pl'ff in error. Filed July 26, 1901. D. F. Reese clerk.

3 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable supreme court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Minnesota, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in a suit between Northern Pacific Railway Company, plaintiff, and Abner Townsend, Minerva Townsend and Joseph Holecek, defendants, said suit being there entitled "Northern Pacific Railway Company, plaintiff and respondent, *vs.* Abner Townsend, Minerva Townsend and Joseph Holecek, defendants and appellants," wherein was drawn in question the validity of a statute or an authority ex-

ercised under the United States and the decision was against its validity, a manifest error hath intervened, to the great damage of said Northern Pacific Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington within thirty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and ac-
4 cording to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 26th day of July in the year of our Lord, one thousand nine hundred and one.

{Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.}

HENRY D. LANG,
Clerk of Circuit Court of United States for District of Minnesota,
By LOUISE B. TROTT, *Deputy.*

The above writ is hereby allowed.

CHAS. M. START,
Chief Justice of Supreme Court of Minnesota.

Dated July 26th, 1901.

5 [Endorsed:] State of Minnesota Supreme court N. P. R'y Co. pl'ff in error, *vs.* Abner Townsend *et al.* def'ts in error. Writ of error. Filed July 26, 1901 D. F. Reese clerk C. W. Bunn and James B. Kerr att'ys for pl'ff in error.

6 THE UNITED STATES OF AMERICA, *ss:*

To Abner Townsend, Minerva Townsend, and Joseph Holecek, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Minnesota, wherein Northern Pacific Railway Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Charles M. Start, chief justice of the su-

preme court of the State of Minnesota, this 26th day of July, in the year of our Lord one thousand nine hundred and one.

CHAS. M. START,
Chief Justice of the Supreme Court of Minnesota.

7 [Endorsed:] Northern Pacific Railway Company plaintiff in error *vs.* Abner Townsend *et al.* defendants in error. Citation. Due service of within citation admitted this 29th day of July 1901 A. G. Broker attorney for Abner Townsend, Minerva Townsend and Joseph Holecek Filed July 26, 1901 D. F. Reese, clerk.

8 STATE OF MINNESOTA:

Supreme Court.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECEK, Defendants in Error.

Know all men by these presents that the Northern Pacific Railway Company, a corporation organized and existing under the laws of the State of Wisconsin, as principal, and T. M. Hannaford and C. A. Clark, of the city of St. Paul and State of Minnesota, as sureties, are firmly bound unto Abner Townsend, Minerva Townsend and Joseph Holecek in the full and just sum of two hundred and fifth dollars ($250.00) to be paid to said Abner Townsend, Minerva Townsend and Joseph Holecek, their heirs, executors or assigns, for which payment well and truly to be made we bind ourselves, our successors, heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 26th day of July in the year of our Lord one thousand nine hundred and one.

Whereas lately in the supreme court of the State of Minnesota in a suit pending in said court between The Northern Pacific Railway Company, plaintiff, and Abner Townsend, Minerva
9 Townsend and Joseph Holecek, defendants, said suit being there entitled "Northern Pacific Railway Company, plaintiff and respondent, *vs.* Abner Townsend, Minerva Townsend and Joseph Holecek, defendants and appellants," judgment was rendered against the said plaintiff, Northern Pacific Railway Company, and the said plaintiff having obtained a writ of error and filed a copy thereof in the office of the clerk of said supreme court of Minnesota, to reverse the judgment in the aforesaid suit, and a citation directed to the said Abner Townsend, Minerva Townsend and Joseph Holecek citing and admonishing them to be and appear at the Supreme Court of the United States at the city of Washington on or before the 26th day of August, 1901;

Now, the condition of the above obligation is such that if the said Northern Pacific Railway Company shall prosecute the said writ of error to effect and answer all damages and costs, if it shall fail to

make its plea good, then the obligation to be void, otherwise to remain in full force and virtue.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. S. MELLEN, *President.*

[Seal Northern Pacific Railway Company, 1886.]

Attest: R. H. RELF,
Assistant Secretary.

J. M. HANNAFORD. [SEAL.]
C. A. CLARK. [SEAL.]

Signed, and delivered in presence of—
H. A. FABIAN.
R. H. JOHNSTON.

Approved by—
CHAS. M. START,
Chief Justice of the Supreme Court of the State of Minnesota.

Dated July 26th, 1901.

10 (Endorsed:) State of Minnesota Supreme court. N. P. R'y Co. pl'ff in error *vs.* Abner Townsend *et al.* def'ts in error. Bond on writ of error. C. W. Bunn and James B. Kerr att'ys for pl'ff in error. Filed July 26, 1901. D. F. Reese, clerk.

11 STATE OF MINNESOTA:

Supreme Court.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff in Error,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECEK, Defendants in Error.

Assignments of Error.

Now comes the above-named plaintiff in error, Northern Pacific Railway Company, by C. W. Bunn and James B. Kerr, its attorneys, and assigns the following errors in the judgment of this court herein:

I.

The court erred in reversing the judgment of the district court for Wadena county, Minnesota.

II.

The court erred in directing judgment to be entered by the district court for Wadena county, Minnesota, in favor of the defendants.

III.

The court erred in dismissing plaintiff's action.

12 IV.

The court erred in holding and deciding that any portion of the right of way granted by that certain act of Congress approved July 2, 1864, entitled "An act granting land to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound on the Pacific coast by the northern route," to the Northern Pacific Railroad Company could be acquired by the adverse possession and occupation of the defendants under the statutes of Minnesota.

V.

The court erred in denying the title of the Northern Pacific Railway Company to the premises in controversy founded upon the grant by the United States to the Northern Pacific Railroad Company, the predecessor in interest of said Northern Pacific Railway Company.

VI.

The court erred in its judgment wherein and whereby it held that the defendants in error had a right to use and occupy the land in controversy notwithstanding the grant thereof under the said act of Congress of July 2nd, 1864, to the said Northern Pacific Railroad Company, predecessor in interest of the plaintiff in error.

NORTHERN PACIFIC RAILWAY COMPANY,
By C. W. BUNN &
JAMES B. KERR, *Its Attorneys.*

Dated July 26th 1901.

13 (Endorsed:) 12645. State of Minnesota. Supreme court. N. P. R'y Co. pl'ff in error *vs.* Abner Townsend *et al.* def'ts in error. Assignment of errors. Filed July 26, 1901. D. F. Reese, clerk. C. W. Bunn and James B. Kerr att'ys, for pl'ff in error.

14 STATE OF MINNESOTA:

Supreme Court, April Term, 1901.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff and Respondent,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECECK, Defendants and Appellants.

Complaint.

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND & JOSEPH HOLECECK, Defendants.

Plaintiff complaining of the defendants above named shows to the court and alleges:

15 Plaintiff is a corporation organized and existing under the laws of the State of Wisconsin and duly authorized to transact business in the State of Minnesota, and is now and for a long time past has been the owner and entitled to the immediate possession of those certain premises lying and being in the county of Wadena, State of Minnesota, more particularly described as follows, to wit:

Commencing at a point on the east line of the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north of range thirty-five (35) west of the fifth principal meridian, two hundred (200) feet north of the center line of the Northern Pacific railroad, as the same is laid out, located and constructed over and across said section twenty-four (24); thence in a northwesterly direction parallel to and two hundred (200) feet distant from the line of said railroad to the west line of said northwest quarter (N. W. ¼) of said section twenty-four (24); thence south on the west line of the northwest quarter (N. W. ¼) of said section twenty-four (24) four hundred (400) feet; thence in a southeasterly direction parallel with and distant two hundred (200) feet from the line of said railroad to the east boundary line of said northwest quarter (N. W. ¼) of said section twenty-four (24); thence north along the east boundary line of said northwest quarter (N. W. ¼) of said section twenty-four (24) to the point of beginning.

Defendants heretofore wrongfully and unlawfully entered upon, took and now hold possession of said premises and all
16 thereof, save and except the railroad track laid thereon, and have deprived and now deprive the plaintiff of the use and possession thereof.

The use and occupation of said premises so occupied by said defendants since the defendants so entered thereon is reasonably worth the sum of one hundred dollars ($100) in which sum the said plaintiff has been damaged by the said wrongful entry and detention of said premises.

Wherefore plaintiff prays judgment against said defendants for the possession of the premises above described and for the sum of one hundred dollars ($100), together with the costs and disbursements of this action.

C. W. BUNN,
L. T. CHAMBERLAIN,
JAMES B. KERR,
Attorneys for Plaintiff, Northern Pacific Railway Company, General Office Building, St. Paul, Minnesota.

(Verification.)

17

Answer.

STATE OF MINNESOTA, *ss:*

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND & JOSEPH HOLECECK, Defendants.

For an answer to the complaint of the plaintiff herein said defendants admit that said plaintiff is a corporation as alleged in said complaint. Deny that said plaintiff is the owner of and entitled to the possession of the premises mentioned and described in said complaint except a strip of land lying and being on the south side of said railroad fifty feet wide alongside of and parallel to the center line of said railroad track and a strip of land one hundred feet wide and lying alongside of and parallel to the center line of said track on the north side thereof across the northwest quarter of said section twenty-four. That all of the land described in said complaint except the strips mentioned herein is the property of Minerva E. Townsend and has been for many years last past. That
18 neither the said plaintiff nor its predecessor or grantor were seized or possessed of the said premises within twenty years before the commencement of this action, but that said defendant, Joseph Holecceck, and Minerva E. Townsend under whom said Holecceck holds by lease, her predecessors and grantors have held and possessed the said premises adversely to the pretended title of said plaintiff for more than fifteen years prior to the commencement of this action. That during all of said time said premises have been usually cultivated and improved for the ordinary use of said occupants. Further answering said complaint said defendants deny each and every allegation, matter and thing in said complaint contained not herein otherwise admitted or denied.

Wherefore said defendants pray for a judgment of this court that this action be dismissed and that they have judgment for their costs.

Dated July 24th, 1900.

A. G. BROKER,
Attorney for Defendants, Wadena, Minn.

(Verification.)

19 *Reply*

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND & JOSEPH HOLECECK, Defendants.

The plaintiff above named for reply to the matters and things set forth in the answer of the defendants above named respectfully shows to the court that it denies that the plaintiff or its predecessor or grantor has not been seized or possessed of the premises described in the answer herein within twenty (20) years before the commencement of this action and denies that the said Joseph Holececk, Minerva E. Townsend, or either of them, have held or possessed the said premises or any part thereof adversely or otherwise for a period of fifteen (15) years prior to the commencement of this action.

20 Wherefore the said plaintiff prays judgment as in the complaint herein demanded.

Dated, July 31st, A. D. 1900.

C. W. BUNN,
L. T. CHAMBERLAIN,
JAMES B. KERR,
Attorneys for Plaintiff, Northern Pacific —,
General Office Building, St. Paul, Minnesota.

(Verification).

Order.

STATE OF MINNESOTA, } ss:
County of Wadena,

NORTHERN PACIFIC RAILWAY COMPANY
vs.
ABNER TOWNSEND & JOSEPH HOLECECK.

Upon the pleadings and papers on file herein and upon motion of James B. Kerr, attorney for the plaintiff, A. G. Broker, attorney appearing for the defendants Abner Townsend and Joseph Holececk, and it appearing to the court that Minerva Townsend, the wife of the defendant, Abner Townsend, is a necessary party to the above-entitled action,

It is ordered, that said Minerva Townsend be and she is

21 hereby made a party defendant hereto, and allowed twenty days from the entry of this order to answer to the complaint herein.

Dated, Wadena, Minn., Dec. 11, 1900.

By the court,

D. B. SEARLE,
District Judge.

Answer of Minerva Townsend.

STATE OF MINNESOTA, *ss:*

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND, JOSEPH HOLECECK, and MINERVA E. TOWNSEND, Defendants.

For an answer to the complaint of the plaintiff herein the said defendant, Minerva E. Townsend, admits that said plaintiff is a corporation as alleged in said complaint. Denies that said plaintiff is the owner and entitled to the possession of the premises mentioned and described in said complaint except a strip fifty feet wide on the south side of the center line of said railroad track and a strip
22 one hundred feet wide on the north side of the center line of said track running across the northwest quarter of section 24 in township 134 north of range 35 in Wadena county, aforesaid, said strips being alongside of and parallel to said center line.

That said land, except the strips above mentioned, is the property of said defendant, Minerva E. Townsend, and has been for many years last past and she is entitled to the possession of the same and for more than fifteen years last past said Minerva E. Townsend and her predecessors and grantors have been in the open, notorious, exclusive and adverse possession of said land and *has* held the same adversely to the pretended title of said plaintiff.

Wherefore, said defendant prays that this action may be dismissed and that she have judgment for her costs and disbursements.

Dated Dec. 29th, 1900.

A. G. BROKER,
Attorney for Defendants, Wadena, Minn.

(Verification.)

23 *Reply.*

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND, JOSEPH HOLECECK, and MINERVA TOWNSEND, Defendants.

Plaintiff above named for reply to the matters and things set forth in the answer of the defendant Minerva Townsend, shows to the court:

That it denies that said defendant Minerva Townsend is the owner

of or has any interest or right of possession in the land described in the complaint herein; and denies that said Minerva Townsend, her predecessor- and grantors, or any of them, have held or possessed the said premises described in the said complaint, or any part thereof, adversely or otherwise for a period of fifteen years previous to the commencement of this action.

Wherefore, plaintiff prays judgment as in the complaint herein demanded.

C. W. BUNN,
L. T. CHAMBERLAIN,
JAMES B. KERR,
Attorneys for Plaintiff.

(Verification.)

24 STATE OF MINNESOTA, } ss:
County of Wadena, }

District Court, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff, *vs.* ABNER TOWNSEND, MINERVA TOWNSEND, and Joseph Holececk, Defendants. } Stipulation of Facts.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the following statement is true:

That by an act of Congress approved July 2, 1864, entitled:
25 "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's sound on the Pacific coast, by the northern route," the Northern Pacific Railroad Company was created as a corporation and was authorized to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph line with the appurtenances, namely, beginning at a point on Lake Superior in the State of Minnesota or Wisconsin, thence westerly by the most eligible route as shall be determined by said company within the territory of the United States on a line north of the 45th degree of latitude to some point on Puget's sound.

II.

By section 2 of said act of Congress it is provided:

"And be it further enacted that the right of way through the public lands be and the same is hereby granted to said Northern Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed and the power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road, materials of earth, stone, timber, etc., for the construction thereof.

Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain." * * *

III.

By section 12 of said act of Congress it was provided that
26 the acceptance of the terms, conditions and impositions of said act by said Northern Pacific Railroad Company should be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained and that such acceptance should be made within two years after the passage of the act and should be served on the President of the United States. That in pursuance of said section 12 of said act of Congress, and on the 29th day of December, A. D. 1864, said Northern Pacific Railroad Company served such written acceptance on the President of the United States, said acceptance being under the corporate seal of said company, executed pursuant to the direction of its board of directors first had and obtained.

IV.

That prior to the 21st day of November, 1871, the said Northern Pacific Railroad Company definitely located that portion of the line of its said railroad extending from a point in section five (5), township forty-eight (48) north, of range sixteen (16) west of the fourth principal meridian, westwardly over and across the State of Minnesota to a point at Fargo on the eastern boundary of the then Territory of Dakota; and on the 21st day of November, 1871, caused a map showing the line of said definite location, duly approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office. That said line of definite
27 location, so located as aforesaid, crossed the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota.

V.

That in the years 1870 and 1871, the said Northern Pacific Railroad Company constructed its railroad and telegraph line on, over and along that portion of its line of definite location so fixed November 21, 1871, as aforesaid, and over and across the said northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota; and said railroad as so constructed follows exactly the line of definite location as fixed November 21, 1871, and so far as the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota, is concerned, no change in the location of the constructed road has ever been made.

VI.

That thereafter the President of the United States appointed three commissioners to examine that portion of the said railroad and telegraph line so constructed as hereinbefore set forth, and, having ex-

amined it, said commissioners, on December 10, 1872, reported
28 to the Secretary of the Interior that that portion of said railroad and telegraph line had been constructed in a good, substantial and workmanlike manner, in all respects as required by the act of Congress of July 2, 1864; that thereafter, to wit: January 6, 1873, the Secretary of the Interior transmitted said report to the President of the United States with the recommendation that said portion of road be accepted; and on January 6, 1873, said report was accepted and said recommendation approved by the President of the United States.

VII.

That on July 2, 1864, there had been no entries or filings, or applications to make entry or filing, upon the said northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota, and said described land was on said date public land to which the United States had full title, and the same was not reserved or otherwise appropriated.

VIII.

That the plaintiff, The Northern Pacific Railway Company, has succeeded to all the right, title and interest which the said Northern Pacific Railroad Company may have had in and to the premises described in the complaint by virtue of being the purchaser of all the railroad property of said Northern Pacific Railroad Company
29 at a foreclosure sale held under a decree of foreclosure foreclosing certain mortgages of said railroad company executed under the authority conferred by that certain joint resolution of the Congress of the United States, entitled: "A joint resolution authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes," approved May 31, 1870.

IX.

That Abner Townsend settled upon the north half of northwest quarter (N. ½ of N. W. ¼), the southwest quarter of northwest quarter (S. W. ¼ N. W. ¼) and northwest quarter of southwest quarter (N. W. ¼, S. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35), west of the fifth principal meridian, Minnesota, on December 1, 1878, with the intention of acquiring title thereto under the public land laws of the United States, and has continued to reside thereon ever since said date. That thereafter, and on December 23, 1878, he filed preemption declaratory statement No. 4647 for said land; and on September 5, 1881, made homestead entry No. 11500 therefor. That thereafter said Townsend duly made final proof and payment for said land, as required by the laws of the United States relating to homestead entries upon the public lands, and on September 28,

1885, receiver's final certificate No. 5890 was issued to him,
30 wherein it was recited that said Townsend was entitled to a patent from the United States for the land last above described; and on November 30, 1885, a patent for said land was issued to him by the United States.

That on February 1, 1882, one George H. Brown made homestead entry No. 11754 for the northeast quarter of southwest quarter (N. E. ¼, S. W. ¼) and southeast quarter of northwest quarter (S. E. ¼, N. W. ¼) of said section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, and established his residence thereon, which residence was thereafter continuously maintained until the sale of the land by him as hereinafter set forth.

That thereafter said Brown duly made final proof and payment for said land, as required by the laws of the United States relating to homestead entries upon the public lands, and on December 26, 1887, receiver's final certificate No. 6398 was issued to him, wherein it was recited that said Brown was entitled to a patent from the United States for the land last above described; and on July 24, 1889, a patent for said land was issued to him by the United States.

That neither the said patent so issued to said Abner Townsend, nor the said patent so issued to George H. Brown contained any exception of right of way, but the same purported to convey the whole of the Government subdivisions therein described.

31 That thereafter, and on December 28, 1886, the said Abner Townsend and wife, by warranty, conveyed to one Elias C. Morse the north half of the northwest quarter (N. ½, N. W. ¼), and southwest quarter of the northwest quarter (S. W. ¼, N. W. ¼) and northwest quarter of southwest quarter (N. W. ¼, S. W. ¼) of said section twenty-four (24).

That on March 12, 1887, the said Elias C. Morse and wife, by warranty deed, conveyed the premises last above described to the defendant Minerva Townsend, and neither of said two deeds last above mentioned contained any exception or reservation of any part of said premises for right of way purposes, but the same purported to convey the whole of the Government subdivisions therein described.

That on June 14, 1888, the said George H. Brown and wife conveyed, by warranty deed, to Wellington Bowker, the southeast quarter of northwest quarter (S. E. ¼, N. W. ¼) and the northeast quarter of southwest quarter (N. E. ¼, S. W. ¼), and on August 9, 1890, the said Wellington Bowker and wife conveyed, by warranty deed, to the defendant Minerva Townsend, the premises last above described, and neither of said two deeds last above mentioned contained any reservation or exception of any portion of said premises for right of way purposes, but purported to convey the whole of the Government subdivisions therein described.

That from the time the said northwest quarter of said section twenty-four (24) became taxable up to and including the
32 year 1893, the same was described upon the assessment-rolls of the said county of Wadena as containing four tracts of

forty acres each and no deduction or exception was made from any thereof upon account of any railroad right of way, and the said defendant, Minerva Townsend, and her grantors during said period up to and including the year 1893 paid taxes upon said northwest quarter of said section twenty-four (24) without any deduction or allowance upon account of any such right of way over said quarter section.

That in the year 1893 the officers of said Wadena county were advised that the Northern Pacific Railroad Company claimed a right of way four hundred feet in width over and across the said northwest quarter of said section twenty-four (24), and thereafter the said acreage contained in a strip of land extending across said quarter section four hundred feet in width was deducted from said quarter section and in assessing the same, taxes were levied and extended against said quarter section less the right of way so claimed by said railroad company. That said action by said officers of said Wadena county was taken by them upon their own motion and without any request or demand upon the part of said defendant Minerva Townsend, or any one in her behalf.

That no plat or map was ever filed by the plaintiff or its predecessor, the Northern Pacific Railroad Company, in said Wadena county, showing the quantity of land claimed by it as right of way over any of the lands in said Wadena county.

33 That at or about the year 1880 the said Northern Pacific Railroad Company constructed a fence on each side of its said railroad, as so constructed, over and across the said northwest quarter of said section twenty-four (24), said fence being situated parallel to and fifty feet distant from the center line of the track of said railroad, and at the same time the railroad company constructed a snow fence upon the north side of said track parallel with and one hundred feet distant therefrom. That said snow fence so constructed by said railroad company is ten hundred and twenty feet in length and extends from a point one hundred and eighty feet distant from the quarter-quarter line between the northeast quarter of the northwest quarter and the northwest quarter of the northwest quarter of said section twenty-four (24), measured on the line of said fence, northwesterly to a point eight hundred and forty feet distant from the quarter-quarter line between the northeast quarter of the northwest quarter and the northwest quarter of the northwest quarter of said section twenty-four (24), measured on the line of said fence.

That said defendant Minerva Townsend and her grantors have cleared and broken the whole of said northwest quarter of said section twenty-four (24) and have cultivated and used the same for agricultural purposes ever since the same was entered as hereinbefore set forth, up to said fences fifty feet distant from said railroad track on each side thereof.

34 That said northwest quarter of said section twenty-four (24) is more than two miles distant from any station, town or village, and there is no branch, spur or side track located thereon, or any track, except the main line of the railroad of said plaintiff.

That no demand has ever been served or made upon the defend-

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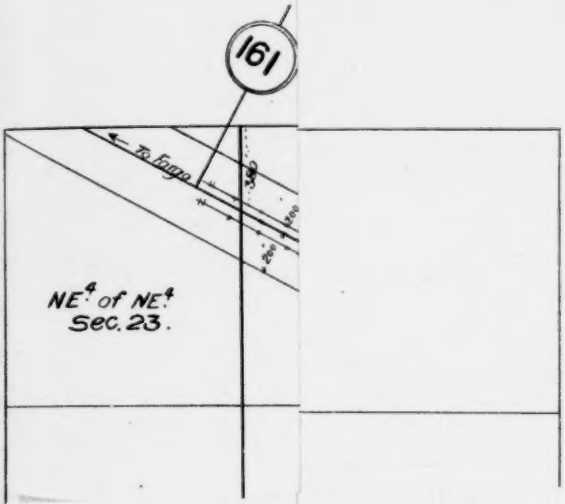

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38 tled: "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's

ant Minerva Townsend, or on Abner Townsend, on Wellington Bowker or George H. Brown, or Elias C. Morse, or any tenant of any of the persons last above named, by the said plaintiff, or its predecessor in interest, for the possession of the premises so occupied by said defendant, as hereinbefore set forth, until within thirty days before the commencement of this action.

That during the period hereinbefore set forth, and while the said defendant Minerva Townsend and her grantors have been engaged in cultivating the said premises, as hereinbefore set forth, the said defendant and her grantors have been in the open, notorious and exclusive possession of the whole of said northwest quarter of said section twenty-four (24), up to the said fences fifty feet distant from the center of said track on the south side thereof, and up to the snow fence one hundred feet distant from said track on the north side thereof, and the officers and agents of said plaintiff and of its predecessor, the Northern Pacific Railroad Company, have had knowledge of said use and occupation. That up to thirty days before the commencement of this action, neither Minerva Town-
35 send, nor any of her grantors, have had actual knowledge of any right or claim by the plaintiff or its predecessor, the Northern Pacific Railroad Company, in or to the premises so occupied by said defendant Minerva Townsend and her grantors, as hereinbefore set forth.

C. W. BUNN,
JAMES B. KERR,
Attorneys for Plaintiff.
A. G. BOOKER,
Attorney for Defendants.

Dated the 23 day of Feb'y 1901.

(Here follows diagram marked p. 36.)

37 *Findings of Fact and Conclusions of Law.*

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECECK, Defendants.

This cause coming on to be heard before the court without a jury, the parties, by their attorneys, consenting that this cause be tried without a jury, and the parties, by their attorneys, having filed herein a stipulation of facts covering the issues raised by the pleadings herein, the court now finds facts as follows:

I.

38 That by an act of Congress approved July 2, 1864, entitled: "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget's

sound on the Pacific coast, by the northern route," the Northern Pacific Railroad Company was created as a corporation and was authorized to lay out, locate, construct, furnish, maintain and enjoy a continuous railroad and telegraph line with the appurtenances, namely, beginning at a point on Lake Superior in the State- of Minnesota or Wisconsin, thence westerly by the most eligible route as shall be determined by said company within the territory of the United States on a line north of the 45th degree of latitude to some point on Puget's sound.

II.

By section 2 of said act of Congress it is provided:

"And be it further enacted that the right of way through the public lands be and the same is hereby granted to said Northern Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph — as proposed and the power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road, materials of earth, stone, timber, etc., for the construction thereof.

Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain. * * *"

III.

By section 12 of said act of Congress it was provided that
39 the acceptance of the terms, conditions and impositions of said act by said Northern Pacific Railroad Company should be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained and that such acceptance should be made within two years after the passage of the act and should be served on the President of the United States. That in pursuance of said section 12 of said act of Congress, and on the 29th day of December, A. D. 1864, said Northern Pacific Railroad Company served such written acceptance on the President of the United States, said acceptance being under the corporate seal of said company, executed pursuant to the direction of its board of directors first had and obtained.

IV.

That prior to the 21st day of November, 1871, the said Northern Pacific Railroad Company definitely located that portion of the line of its said railroad extending from a point in section five (5), township forty-eight (48) north, of range sixteen (16) west of the fourth principal meridian, westwardly over and across the State of Minnesota to a point at Fargo on the eastern boundary of the then Territory of Dakota; and on the 21st day of November, 1871, caused a map showing the line of said definite location, duly approved by the Secretary of the Interior, to be filed in the office of the Commissioner of the General Land Office. That said line of definite
40 location, so located as aforesaid, crossed the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred

thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota.

V.

That in the years 1870 and 1871, the said Northern Pacific Railroad Company constructed its railroad and telegraph line on, over and along that portion of its line of definite location so fixed November 21, 1871, as aforesaid, and over and across the said northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota; and said railroad as so constructed follows exactly the line of definite location as fixed November 21, 1871, and so far as the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota, is concerned, no change in the location of the constructed road has ever been made.

VI.

That thereafter the President of the United States appointed three commissioners to examine that portion of the said railroad and telegraph line so constructed as hereinbefore set forth, and, having examined it, said commissioners, on December 10, 1872, reported
41 to the Secretary of the Interior that that portion of said railroad and telegraph line had been constructed in a good, substantial and workmanlike manner, in all respects as required by the act of Congress of July 2, 1864; that thereafter, to wit: January 6, 1873, the Secretary of the Interior transmitted said report to the President of the United States with the recommendation that said portion of road be accepted; and on January 6, 1873, said report was accepted and said recommendation approved by the President of the United States.

VII.

That on July 2, 1864, there had been no entries or filings, or applications to make entry or filing, upon the said northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, Minnesota, and said described land was on said date public land to which the United States had full title, and the same was not reserved or otherwise appropriated.

VIII.

That the plaintiff, The Northern Pacific Railway Company, has succeeded to all the right, title and interest which the said Northern Pacific Railroad Company may have had in and to the premises described in the complaint by virtue of being the purchaser of all the railroad property of said Northern Pacific Railroad Com-
42 pany at a foreclosure sale held under a decree of foreclosure foreclosing certain mortgages of said railroad company executed under the authority conferred by that certain joint resolution of the Congress of the United States, entitled: "A joint resolu-

tion authorizing the Northern Pacific Railroad Company to issue bonds for the construction of its road and to secure the same by mortgage, and for other purposes," approved May 31, 1870.

IX.

That Abner Townsend settled upon the north half of northwest quarter (N. ½ of N. W. ¼), the southwest quarter of northwest quarter (S. W. ¼ N. W. ¼) and northwest quarter of southwest quarter (N. W. ¼, S. W. ¼) c. ection twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35), west of the fifth principal meridian, Minnesota, on December 1, 1878, with the intention of acquiring title thereto under the public land laws of the United States, and has continued to reside thereon ever since said date. That thereafter, and on December 23, 1878, he filed pre-emption declaratory statement No. 4647 for said land; and on September 5, 1881, made homestead entry No. 11500 therefor. That thereafter said Townsend duly made final proof and payment for said land, as required by the laws of the United States relating to homestead entries upon the public lands, and on September 28, 1885, receiver's final certificate No. 5890 was issued to him, wherein
43 it was recited that said Townsend was entitled to a patent from the United States for the land last above described; and on November 30, 1885, a patent for said land was issued to him by the United States.

That on February 1, 1882, one George H. Brown made homestead entry No. 11754 for the northeast quarter of southwest quarter (N. E. ¼, S. W. ¼) and southeast quarter of northwest quarter (S. E. ¼, N. W. ¼) of said section twenty-four (24), township one hundred thirty-four (134) north, of range thirty-five (35) west of the fifth principal meridian, and established his residence thereon, which residence was thereafter continuously maintained until the sale of the land by him as hereinafter set forth.

That thereafter said Brown duly made final proof and payment for said land, as required by the laws of the United States relating to homestead entries upon the public lands, and on December 26, 1887, receiver's final certificate No. 6398 was issued to him, wherein it was recited that said Brown was entitled to a patent from the United States for the land last above described; and on July 24, 1889, a patent for said land was issued to him by the United States.

That neither the said patent so issued to said Abner Townsend, nor the said patent so issued to George H. Brown contained any exception of right of way, but the same purported to convey the whole of the Government subdivisions therein described.

44 That thereafter, and on December 28, 1886, the said Abner Townsend and wife, by warranty, conveyed to one Elias C. Morse the north half of the northwest quarter (N. ½, N. W. ¼), and southwest quarter of the northwest quarter (S. W. ¼, N. W. ¼) and northwest quarter of southwest quarter (N. W. ¼, S. W. ¼) of said section twenty-four (24).

That on March 12, 1887, the said Elias C. Morse and wife, by warranty deed, conveyed the premises last above described to the

defendant Minerva Townsend, and neither of said two deeds last above mentioned contained any exception or reservation of any part of said premises for right of way purposes, but the same purported to convey the whole of the Government subdivisions therein described.

That on June 14, 1888, the said George H. Brown and wife conveyed, by warranty deed, to Wellington Bowker, the southeast quarter of northwest quarter (S. E. ¼, N. W. ¼) and the northeast quarter of southwest quarter (N. E. ¼, S. W. ¼), and on August 9, 1890, the said Wellington Bowker and wife conveyed, by warranty deed, to the defendant Minerva Townsend, the premises last above described, and neither of said two deeds last above mentioned contained any reservation or exception of any portion of said premises for right of way purposes, but purported to convey the whole of the Government subdivisions therein described.

That from the time the said northwest quarter of said section twenty-four (24) became taxable up to and including the
45 year 1893, the same was described upon the assessment-rolls of the said county of Wadena as containing four tracts of forty acres each and no deduction or exception was made from any thereof upon account of any railroad right of way, and the said defendant, Minerva Townsend, and her grantors during said period up to and including the year 1893 paid taxes upon said northwest quarter of said section twenty-four (24) without any deduction or allowance upon account of any such right of way over said quarter section.

That in the year 1893 the officers of said Wadena county were advised that the Northern Pacific Railroad Company claimed a right of way four hundred feet in width over and across the said northwest quarter of said section twenty-four (24), and thereafter the said acreage contained in a strip of land extending across said quarter section four hundred feet in width was deducted from said quarter section and in assessing the same, taxes were levied and extended against said quarter section less the right of way so claimed by said railroad company. That said action by said officers of said Wadena county was taken by them upon their own motion and without any request or demand upon the part of said defendant Minerva Townsend, or any one in her behalf.

That no plat or map was ever filed by the plaintiff or its predecessor, the Northern Pacific Railroad Company, in said Wadena county showing the quantity of land claimed by it as right of way over any of the lands in said Wadena county.

46 That at or about the year 1880 the said Northern Pacific Railroad Company constructed a fence on each side of its said railroad, as so constructed, over and across the said northwest quarter of said section twenty-four (24), said fence being situated parallel to and fifty feet distant from the center line of the track of said railroad, and at the same time the said railroad company constructed a snow fence upon the north side of said track parallel with and one hundred feet distant therefrom. That said snow fence so constructed by said railroad company is ten hundred and twenty

feet in length and extends from a point one hundred and eighty feet distant from the quarter-quarter line between the northeast quarter of the northwest quarter and the northwest quarter of the northwest quarter of said section twenty-four (24), measured on the line of said fence, northwesterly to a point eight hundred and forty feet distant from the quarter-quarter line between the northeast quarter of the northwest quarter and the northwest quarter of the northwest quarter of said section twenty-four (24), measured on the line of said fence.

That said defendant Minerva Townsend and her grantors have cleared and broken the whole of said northwest quarter of said section twenty-four (24) and have cultivated and used the same for agricultural purposes ever since the same was entered as hereinbefore set forth, up to said fences fifty feet distant from said railroad track on each side thereof.

47 That said northwest quarter of said section twenty-four (24) is more than two miles distant from any station, town or village, and there is no branch, spur or side track located thereon, or any track, except the main line of the railroad of said plaintiff.

That no demand has ever been served or made upon the defendant Minerva Townsend, or on Abner Townsend, on Wellington Bowker or George H. Brown, or Elias C. Morse, or any tenant of any of the persons last above named, by the said plaintiff, or its predecessor in interest, for the possession of the premises so occupied by said defendant, as hereinbefore set forth, until within thirty days before the commencement of this action.

That during the period hereinbefore set forth, and while the said defendant Minerva Townsend and her grantors have been engaged in cultivating the said premises, as hereinbefore set forth, the said defendant and her grantors have been in the open, notorious and exclusive possession of the whole of said northwest quarter of said section twenty-four (24), up to the said fences fifty feet distant from the center of said track on the south side thereof, and up to the snow fence one hundred feet distant from said track on the north side thereof, and the officers and agents of said plaintiff and of its predecessor, the Northern Pacific Railroad Company, have had knowledge of said use and occupation. That up to thirty days before the commencement of this action, neither Minerva Townsend, nor

48 any of her grantors, have had actual knowledge of any right or claim by the plaintiff or its predecessor, the Northern Pacific Railroad Company, in or to the premises so occupied by said defendant Minerva Townsend and her grantors, as hereinbefore set forth.

Conclusions of Law.

And the court finds as conclusions of law that the plaintiff is entitled to judgment for the possession of the premises described in the complaint herein, and for costs, and it is so ordered.

Dated, St. Cloud, Minnesota, March 23rd, 1901.

By the court,

D. B. SEARLE,
District Judge.

Note.

This is an action brought by the Northern Pacific Railway Company to eject the defendants from two strips of land situate on either side of the plaintiff's railroad track where the same crosses the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty-four (134) north, range thirty-five (35) west, Wadena county.

The title of the plaintiff is founded on the grant by act of Congress approved July 2, 1864, to the plaintiff's predecessor in interest, the Northern Pacific Railroad Company (U. S. Stat. at Large, vol. 13, p. 365). By section 2 of this act it is provided:

"And be it further enacted that the right of way through the public lands be and the same is hereby granted to said
49 Northern Pacific Railroad Company, its successors and assigns, for the construction of a railroad and telegraph as proposed, and the power and authority is hereby given to said corporation to take from the public lands adjacent to the line of said road, materials of earth, stone, timber, etc., for the construction thereof. Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain. * * * "

It appears that on July 2, 1864, the land in question was public land and that the Northern Pacific Railroad Company constructed its road across the land in 1870 and 1871 and in November, 1871, filed a map showing the definite location of the road as constructed in the office of the Commissioner of the General Land Office at Washington.

These facts appearing it was conceded, on the argument, that the Northern Pacific Railroad Company acquired a right of way four hundred feet in width which included the strips now sued for. This concession was in accordance with the authorities construing similar acts of Congress granting rights of way.

Railroad *v.* Baldwin, 103 U. S., 426.
Bybee *v.* Oregon, etc., R. R. Co., 139 U. S., 663.

Some question was raised as to the nature of the estate conferred by this grant whether it was an easement, a qualified fee or an absolute fee. It is unnecessary to determine the precise technical nature of the estate or interest granted for the right conferred
50 is one possessory in its nature and is sufficient to sustain an action like the present one.

New Mexico *v.* U. S. Trust Co., 172 U. S., 171, 182.

The defendants, although conceding that the title of the Northern Pacific Railroad Company, plaintiff's predecessor, was originally valid, insist that this title and right of possession to the premises in controversy have been lost by reason of the fact that the defendants and those under whom they claim have been in adverse possession of the premises in question for more than fifteen years before the commencement of this action, and probably sufficient facts appear

regarding the occupation by the defendants and their predecessors to support the claim of defendants unless the peculiar character of the use to which the premises in question have been dedicated creates an exception to the general rule relating to actions for the recovery of real property.

It is contended by the plaintiff that the whole of its right of way granted by the act of Congress above referred to is charged with a public use and further that it is part of the railroad property, is inseparable from the franchises and is not subject to alienation and therefore cannot be lost by adverse possession.

The rule is well settled that the property of a quasi-public corporation which has received a franchise from the public, so far as it is necessary to a performance of the duties which the corporation owes to the public under its franchise, cannot be alienated without special legislative authority in that behalf. Considerations of public policy forbid a dismemberment of the property of such a corporation, and the resulting disability to perform those duties the performance of which is for the benefit of the public and which form the consideration of the grant of those special privileges which are enjoyed by the corporation.

51

Thomas *v.* Railroad Co., 101 U. S., 71.

Nor can such property be dismembered by proceedings *in invitum.*

Gue *v.* Tidewater Canal Co., 24 How., 257.
East Alabama R'd Co. *v.* Doe, 114 U. S., 340.

Furthermore, in the present case the right of way claimed by the plaintiff was granted by Congress, as the act recites, not merely for the purpose of aiding a road intended as a common carrier of goods and passengers, but also for the purpose of creating a Government agency for the transportation of the mails and of troops and munitions of war.

The single question to be decided in this case is whether the portions of the right of way here in question are inseparable from the railroad and its franchise in the sense and to the extent that they could not have been alienated by the plaintiff, or its predecessor, and could not have been taken on execution. In my judgment the determination of this question is decisive of this case and I think it must be determined by the inquiry whether the portion of the right of way in controversy is necessary to the operation of the road and the performance of those duties which the company owes to the public as a common carrier and to the Federal Government as its special servant.

52

The question is not free from doubt and neither the research of counsel, nor my own examination has discovered any authority which in a case like the present one decides the precise point. I am of the opinion, however, that upon analogy the principles laid down by the Supreme Court of the United States in Northern Pacific Railroad Company *v.* Smith, 171 U. S., 260, are controlling. In view of the fact that this right of way was granted by Congress over

the public lands for the purposes above mentioned, it seems clear that a construction by the Federal Supreme Court is binding upon the State tribunals.

The facts in Northern Pacific Railroad Company *v.* Smith are as follows: The action was brought by one Smith to recover from the railroad company certain lots situated within two hundred feet of the constructed railroad in the city of Bismarck, North Dakota. The company had filed a map of definite location showing the route of its line some two miles south of Bismarck, and afterwards, and without filing any new map, changed its location by constructing its road through the premises in controversy in the year 1873. In 1879 the town site of Bismarck, including the premises sued for, was patented to the mayor of that city, and in the same year,
53 1870, a deed was given to the plaintiff by the city authorities purporting to convey the premises in controversy.

It was contended by the railroad company that by virtue of the construction of the road the grant of right of way took effect and was defined by the constructed road and that under the grant the company took title to a strip four hundred feet in width. The court strongly inclines to the view that this position is correct and then proceeds to consider the case from the standpoint that the rights of the company under the grant were confined to the line defined by the map of definite location. The court reviews the authorities in many States which hold that, where a railroad is constructed across private property with the acquiescence of the land-owner, the railroad company acquires the right of occupancy and cannot be disturbed in its possession and the land-owner is relegated to a proceeding to recover damages for the land appropriated. The court then proceeds to consider the effect of the grant to the Northern Pacific Company, conferring a right of way four hundred feet wide upon the question of the quantity of land so appropriated and says:

"Upon principle and authority we therefore conclude that neither the city of Bismarck, as owners of the town site, nor its grantee Smith, can, under the facts and circumstances shown in this record, disturb the possession of the Northern Pacific Railroad Company in its right of way extending two hundred feet on each side of its said
54 road. The finding of the trial court, that only twenty-five feet in width has ever been occupied for railroad purposes, is immaterial. By granting a right of way four hundred feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance, and it was not competent for a court, at the suit of a private party, to adjudge that only twenty-five feet thereof were occupied for railroad purposes in the face of the grant and of the finding that the entire land in dispute was within two hundred feet of the track of the railroad as actually constructed, and that the railroad company was in actual possession thereof by its tenants. The precise character of the business carried on by such tenants is not disclosed to us, but we are permitted to presume that it is consistent with the public duties and purposes of the railroad company; and, at any

rate, a forfeiture for misuser could not be enforced in a private action."

The rule laid down by the court is not the law of this State as respects the effect of an appropriation of private property for railroad purposes, (Minneapolis Western R'y Co. *v.* Minneapolis & St. L. R'y Co. *et al.*, 58 Minn., 128) but in the case under consideration the land appropriated by the railroad company was confessedly public land and the original title of the railroad company to the right of way is not questioned. I am, therefore, of the opinion that the decision of the Supreme Court of the United States is binding
55 on the proposition that in making the grant Congress gave a conclusive legislative determination that the right of way four hundred feet wide was necessary for a public work of such importance. Furthermore, upon principle I am inclined to the view that this is the safer ground upon which to rest. If it is competent for a court or jury to enter upon the inquiry in this case and to conclude and adjudge that the premises in question are not necessary for the operation of the road, it would be equally competent for a court to enter upon the same inquiry and adjudge that a strip of land only wide enough to carry the rails and ties was all that was necessary. It is apparent that the question to be determined is not only that of present necessity, but of future necessity also, and the examination of this question would in the nature of things involve a court in matters of speculation which cannot be the subject of proof.

I am of opinion that the plaintiff is entitled to judgment.

56 *Judgment.*

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECECK, Defendants.

This cause having come on to be heard by the court, without a jury, the parties, by their attorneys, consenting that the issue herein be tried without a jury, and a stipulation of facts having been filed herein, and the court having filed its findings of fact and conclusions of law and ordered judgment herein, on the 25th day of March, 1901, now, in accordance with said conclusions of law and order for judgment, it is

Ordered, adjudged and decreed that the plaintiff is the owner and entitled to the possession of those certain premises situate in the county of Wadena, and State of Minnesota more particularly described as follows, to wit:

Commencing at a point on the east line of the northwest quarter (N. W. ¼) of section twenty-four (24), township one hundred thirty

four (134) north, of range thirty-five (35) west of the fifth prin-
57 cipal meridian two hundred (200) feet north of the center line of the Northern Pacific railroad as the same is laid out, located and constructed over and across said section twenty-four (24); thence in a northwesterly direction parallel to and two hundred (200) feet distant from the line of said railroad to the west line of said northwest quarter (N. W. ¼) of said section twenty-four (24); thence south on the west line of the northwest quarter of said section twenty-four (24) four hundred (400) feet; thence in a southeasterly direction parallel with and distant two hundred (200) feet from the line of said railroad to the east boundary line of said northwest quarter (N. W. ¼) of said section twenty-four (24); thence north along the east boundary line of said northwest quarter (N. W. ¼) of said section twenty-four (24) to the place of beginning.

And it is further ordered, adjudged and decreed that the defendants deliver to said plaintiff the possession of said premises forthwith, and that the plaintiff do have and recover its costs and disbursements herein, which are hereby taxed and allowed in the sum of $—.

Witness the Honorable D. B. Searle, the judge of said court, and the seal of said court, at the town of Wadena, in Wadena county, Minnesota, this 25th day of March, A. D. 1901.

W. L. NORTHFOSS,
Clerk of the District Court, Wadena County, 7th Judicial Dist.,
By EUGENE BOYER.

58 *Notice of Appeal.*

STATE OF MINNESOTA:

District Court, County of Wadena, Seventh Judicial District.

NORTHERN PACIFIC RAILWAY COMPANY, Plaintiff,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH HOLECECK, Defendants.

To C. W. Bunn, L. T. Chamberlain, and James B. Kerr, attorneys for the above-named plaintiff, and to W. L. Northfoss, clerk of said district court:

Please take notice that the above-named defendants appeal to the supreme court of the State of Minnesota from the judgment of said district court entered herein and docketed in the office of the clerk of said court on the 25th day of March, 1901, in favor of said plaintiff and against the said defendants.

Dated this 25th day of March, 1901.

A. G. BROKER,
Attorney for Defendants.

Waiver of Bond on Appeal.

The giving of a bond or making of deposit on appeal is hereby waived.

C. W. BUNN,
L. T. CHAMBERLAIN,
JAMES B. KERR,
Plaintiff's Attorneys.

59 12645.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1901.

NORTHERN PACIFIC RAILWAY COMPANY, Respondent,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and Joseph Holece-k, Appellants.
} No. 173. Syllabus.

1. One who enters a tract of land under the United States homestead laws, across which the Northern Pacific Railroad Company had previously constructed its line of road, on the right of way provided for by the congressional land-grant act of July 2nd, 1864, may, as against such company, acquire title to a part of such way by adverse possession for the fifteen-year period prescribed by G. S. 1894, § 5134, a statute of limitations.
2. The entry under the homestead laws was in the year 1882, and subject,—of course—to the previously acquired rights of the beneficiary of the land-grant act. The adverse possession began soon after, and more than fifteen years prior to the commencement of this action to regain possession. Held, that it is immaterial that the receiver's final receipt was not issued to the entryman until December, 1887, and that the United States patent was not executed until July 1889.

Judgment reversed.

60 12645.

STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1901.

NORTHERN PACIFIC RAILWAY COMPANY, Respondent,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and Joseph Holece-k, Appellants.
} No. 173. Opinion.

Ejectment brought to recover possession of two strips of land situate on either side of plaintiff's railway track where the same crosses three forties of the N. W. ¼ of § 24, T. 134, R. 35.

It is conceded that, under the land-grant act of July 2nd, 1864, the filing of a map of definite location in 1871, and by the construction

of its railway, the Northern Pacific Railroad Company, plaintiff's predecessor, acquired a right of way 400 feet in width where the road ran through and over what was then public domain, which included the ¼ sec. in question. These strips were originally part of this way.

The defendant, Minerva Townsend, is the grantee of two persons who entered these forties under the United States homestead act, subsequent to 1871, and to whom they were duly patented. She admits that the right of possession, and possession, constructively, at least, was originally in the plaintiff's predecessor, but
61 claims that possession and the right thereto has been wholly lost by reason of the fact that her grantors and herself have been in actual, open, notorious and adverse possession of these strips and cultivated the same continuously for more than fifteen years before the commencement of this action. The court below so found, and that this had been with the knowledge of the officers and agents of plaintiff company, and of its predecessor, the original beneficiary of the act of Congress by which the right of way was granted and its width fixed, but held that plaintiff was entitled to recover, because the right of way as the same was fixed by the act of Congress was charged with a public use to its full width and because, as a part of the railroad property, the way was inseparable from the franchise and was not the subject of alienation. Therefore no part of it could be lost by adverse possession.

Because of this peculiar public use to which the 400-foot strip had been devoted by the grant, it was held that the land in dispute was not subject to the operation of our statutes of limitation as to adverse possession. On appeal the question is whether any part of the right of way, as fixed and granted by the act of Congress, can be lost by adverse occupation for a period of fifteen years. The argument of counsel for the railway company is that as the right of way was granted by Congress to the company, to enable it to perform the duties which it owed to the public under its charter, and as the whole thereof was charged with a public use, and, as it is clear, upon principle and authority, that the company is without power to convey any portion thereof as granted, it inevitably follows that no part of this 400-foot strip is subject to any statute which would
62 reduce its width, or prevent the plaintiff company from using it, as a whole, for railway purposes and to its full width. The decisions, urge the counsel, are conclusive on the proposition that a railway corporation, owing duties to the public in the exercise of its corporate functions cannot by voluntary conveyance, or otherwise, part with any of its property necessary for a proper discharge of these duties.

A number of cases are cited in support of this statement. We see no reason to question the rules of law laid down in these cases, but, in our opinion, they are not in point here.

One of them, Thomas *v.* R'y Co. 101 U. S. 71, was where the defendant, railway company, undertook to lease all of its road, rolling stock and its franchise, for which leasing no special authority had

been conferred by its charter. The court held that such a contract was invalid.

Another, East Al. Railway Company *v.* Doe, 114 U. S. 340, was where a railroad corporation having a franchise to own and operate a road acquired an easement for its right of way through certain lands, partly by grant and partly by condemnation. After a part of its line was graded a judgment creditor levied an execution on the right of way and it was sold and conveyed to him by the sheriff. The court held that, by itself and separately, the right of way could not be sold on execution and that the creditor had obtained no title. In both these cases the acts complained of, a lease in one case and a forced sale of the right of way (an actual dismemberment of this right from the franchise) were of such a nature that the corporations could not perform the functions for which they were
63 created, or the duties which they owed to the public, should the acts be upheld. In the Thomas case the act of the company was clearly *ultra vires*, for it had no authority to lease and in attempting so to do was disabling itself from performing its corporate functions. In the Doe case the controlling idea was that the right of way, being a mere easement in the land, was indissolubly linked so long as they should exist, to the franchise, to the purpose of the existence of the corporation and to its public functions, and that they could not be separated by a sale of the right of way. The present case is not parallel to either of these. Here the company built its road more than twenty years ago, fenced a strip 100 feet in width—50 feet on each side of its track center—has used that strip and no more, and has acquiesced in the use and cultivation by defendants and their predecessors, of all of its original grant lying outside of its fences for more than fifteen years, under a claim of right. It has not attempted to lease its entire property, nor has there been a proceeding *in invitum*, whereby it could be prevented, by an actual dismemberment of its right of way from its franchise, from properly exercising its corporate functions or from performing its duties to the public. But in this connection we call attention to Crowley *v.* Minn. & St. Louis R. R. Co. 30 Minn. 541, wherein it was said, when considering a conveyance by a railway corporation, that no one whose interests are not affected, except the State, can call in question the capacity of the corporation to sell or hold property. But counsel point with emphasis to the case of Northern Pacific Railroad Co. the predecessor of this plaintiff, *v.* Smith, 171 U. S. 260, as being conclusive here.

We take their statement of the facts in issue, as correct.
64 Smith brought an action in ejectment against the company to recover possession of certain premises situated within two hundred feet of its track center as built within the limits of the town of Bismarck, North Dakota. It appeared that the company had originally located its line some distance south of the present site of that town and had filed its map of definite location in the office of the Commissioner of the General Land Office. Thereafter, in 1873, and without filing any new map, the company changed its location and constructed its road just where it has since remained.

Afterwards—in 1879—the town site of Bismarck, including the tract sued for, was patented to the mayor and the same year a deed of conveyance covering the premises in question, was executed to Smith by the town authorities. Upon these facts the court held, that, under the act or grant of Congress and by virtue of the construction of its road, the company obtained a right of way 200 feet in width upon either side of the center line of its tracks, as the same were laid upon the ground, that the rights of the plaintiff were subject to this grant to its specified width and that the tenants of the company could not be ejected from the property in dispute. That part of this decision to which attention has been called is as follows: "By granting a right of way four hundred feet in width, Congress must be understood to have conclusively determined that a strip of that width was necessary for a public work of such importance, and it was not competent for a court at the suit of a private party, to adjudge that only twenty-five feet thereof were occupied for railroad purposes in the face of the grant, and of the find-
65 ing that the entire land in dispute was within two hundred feet of the track of the railroad as actually constructed, and that the railroad company was in actual possession thereof by its tenants."

It having been decided in this case that by its grant Congress conclusively determined that a strip four hundred feet in width was necessary for a right of way and, further, that a court could not cut it down to twenty-five feet, it is urged that it must follow that our statute of limitations cannot apply to any part of this grant—because the result would be to cut down the right of way to less than four hundred feet in width. But, in answer to this, attention may be called to the fact that in every State where the width of a railway right of way is fixed by statute, the legislature has quite as conclusively determined what width is necessary for the purpose, as has Congress by the act in question. It is impossible for us to see that the doctrine established in the Thomas case is determinative of this, or is in point at all. The mere fact that Congress has conclusively determined that the right of way should be four hundred feet in width across the public domain, and thereupon it was decided that what was thus declared to be necessary could not be cut down by the courts, does not infringe at all upon defendant's claim that the plaintiff company may lose a portion of its original right of way by adverse possession and be barred from recovery by the fifteen-year statute of limitations. The question was, whether, upon shifting its track line after filing a map of definite location, the company took a right of way under the act of Congress and to the width therein described, or a way of less width, what it actually used. Surely
66 no private person could question the right of the company to change its line, unless his rights had intervened and had become attached to land in dispute prior to such change. If this right to change could not be questioned it would necessarily follow that the Federal Government, only, could insist that the width of the right of way was not the same, wherever the road

might actually be constructed. No criticism could well be made of the language used, or the conclusion reached, but neither language nor conclusion control this case any more than they would if the right of way had been obtained under a provision of an act passed by the legislature of one of the States, or by purchase. But it is rather singular, when we consider the assertion made by counsel as to the impossibility of a railway company to part with any portion of its right of way, voluntarily or involuntarily, that in the Smith case the right to lease was recognized, for the only possession relied upon by the plaintiff company was that of its tenants, concerning which the court said :—"The precise character of the business carried on by such tenants is not disclosed to us, but we are permitted to presume that it is consistent with the public duties and purposes of the railroad company." By this quoted expression the court distinctly recognized that the defendant company had leased, and had the power so to do, when the occupation of its tenants was not inconsistent with or opposed to the proper operation of its road and to the performance of its duties as a common carrier. And we are safe in saying that on the facts now before us the presumption arises
67 that the occupation by defendants of the tract in question, outside of the plaintiff's fences, conflicts not at all with a proper operation of its railway, and is not in the way of a complete performance of plaintiff's duties to the public.

The real object of this statute of limitations is to prevent litigation and to quiet title to land which has remained in the possession of another adversely, and in hostility to its true owner for the specified period of time. Such a law is a continual and decisive notice to owners that if they allow others to adversely occupy, use and improve their land for fifteen years continuously, they must be deemed to have acquiesced in the assertion of the occupant's claim of right to use the same, and to have abandoned all opposition thereto. There may be exceptional instance-, in which the nature of the right affected, or the character of the party in whom the title is vested will prevent the operation of the statute, but the facts here do not come within the exception. That a railway company may be deprived of a part of its right of way by adverse occupation for the statutory period of time, and that such an occupation will bar its right to eject its adversary, has often been determined by the courts of this country.

Pittsburgh C. C. & L. R'y Co. *v.* Stickley, 155 Ind. 312
Mathews *v.* L. S. & M. S. R'y Co. 110 Mich. 170;
Littlefield *v.* Boston A. R. Co. 146 Mass. 268;
Ill. Cent. R'y Co. *v.* Wakefield, 173 Ill. 564, and cases cited.
See also upon this subject 15 Harvard Law Review 146.

It has also been decided, that it is immaterial whether title is held by the company in fee-simple or is a mere easement or a qual-
68 ified fee, or an absolute fee. For whichever it is, the right conferred is a possessory one and sufficient to sustain an action of ejectment. Nor is it material whether the statute under which the defendants claim, is regarded as one indulging in

the presumption of a grant by the true owner, or is simply a statute of repose. We have held that it is the latter in Dean *v.* Goddard, 55 Minn. 290. We have also decided that real property belonging to municipal corporations and quasi-public corporations can be lost under the statute by adverse possession.

St. Paul *v.* Chicago etc. R. Co. 45 Minn. 387;
St. Paul etc. R. Co. *v.* Minneapolis, 45 Minn. 400;
Wayzata *v.* G. N. R'y Co. 50 Minn. 438.

Municipal corporations hold real property for public use and for public purposes in a greater sense than do railway companies hold their right of way. There is no reason whatever for determining that the former are subject to the operation of the statute and, at the same time, hold that the latter are exempt from the operation of the same law. Such a conclusion would take front rank among the legal absurdities.

Let us look at the judgment from which the defendants have appealed from a practical standpoint, and see what it means if the contention of plaintiff's counsel be sustained. The right of way granted under the act of June 2nd 1864, was east and west across and through this State from Lake Superior to the Red River of the North, over the public domain. Although part of the territory to be traversed had been disposed of by the Federal Government prior to the passage of the act, the grant came very near being a strip of land four
69 hundred feet wide for about 250 miles. If plaintiff's claim be upheld, we should have, stretching across the State from east to west, a strip of territory 400 feet wide, upon which no person could travel without committing a trespass; over which no railway company could obtain the right to lay its rails, and across which no public highway could be established, except by consent of plaintiff. If counsel should be sustained the public could not obtain the right, by proceedings under the statutes, or even by prescription, to a public way for ordinary travel and municipal authorities would have to enter into private negotiations with plaintiff in order to secure the privilege of a highway crossing of this strip. And so would corporations organized for public purposes and equipped with the right of eminent domain. Any and all of these proceedings would be as inimical to the rule which counsel assert in this case, and quite as open to the objections now relied upon, as is the application of the statute of limitations as to adverse possession to the facts now before us. It would be preposterous to announce a rule of law which would uphold and permit such a result.

No matter what rights the beneficiary of the grant may have to use and occupy, if it so chooses, its right of way over and through public domain to the full extent of four hundred feet, it is obvious that it must take this right subject to the statute relating to adverse possession. No other conclusion can be tolerated.

As to one forty of the three, it is claimed that from the findings, it clearly appears that the strips therein have not been and
70 could not be held adversely for the full period of fifteen years prior to the commencement of this action. From the

record it seems that this tract of forty acres was entered under the homestead laws of the United States by a man named Brown, February 1st, 1882, subject, of course, to the provisions of the prior grant to the N. P. Company. A receiver's final receipt was issued to him December 26th, 1887, and a patent July 24th, 1889. The claim is that prior to the time of the issuance of the final receipt, Brown was occupying the forty in subordination to the title of the United States and could not avail himself of the statute of limitations. It is urged that he could not, and was not holding possession adversely to all titles and to all claimants, and for this reason the statute does not apply. But it is immaterial when Brown obtained evidence of his title, his paper title. He initiated his adverse and hostile claim to the strips in dispute, upon making his homestead entry, more than fifteen years prior to the commencement of this action. He and his grantors continuously thereafter occupied parts of the forty with intent to claim the same as against the company. His entry and possession were adverse. Both were hostile in their origin and hostile in their continuance.

As to both strips, Mr. Brown and the defendants were precisely in the position of any one who had entered into possession thereof under a claim of title and without reference to the balance of the forty. But, if this were not so, and his and their title to these strips had to depend upon and be connected with his homestead entry, the fact is, that upon making this entry, in 1882, his rights
71 to the forty became fixed and certain. They were not subordinate to the Government title and could not be taken away from him by any other person, natural or artificial. And when the patent was issued to him, in the year 1889, it related back, for all purposes, to the time of the original entry.

No distinction between the forties can be made when considering and determining the question in issue.

The judgment appealed from is reversed, and upon remittitur, judgment may be entered in favor of the defendants.

COLLINS, *J.*

(Endorsed :) No. 12645. State of Minnesota supreme court. Northern Pacific Railway Co. respondent *vs.* Abner Townsend *et al.* appellants. Opinion and syllabus. Filed July 12, 1901. D. F. Reese, clerk. April term, A. D. 1901. Collins J.

72 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1901.

NORTHERN PACIFIC RAILWAY COMPANY, Respondent,
vs.
ABNER TOWNSEND, MINERVA TOWNSEND, and JOSEPH Holacek, Appellants. } No. 173.

Pursuant to an order of court duly made and entered in this cause, on the 26th day of July A. D. 1901

It is here and hereby determined and adjudged that the judg-

ment of the court below, herein appealed from, to wit, of the district court of the seventh judicial district, sitting within and for the county of Wadena be and the same hereby is in all things reversed, and upon remittitur, judgment may be entered in favor of the defendants. And it is further determined and adjudged that the appellants above named, do have and recover of said Northern Pacific Railway Company respondent herein the sum and amount of forty-nine and $\frac{4}{100}$ dollars ($49.04) costs and disbursements in this cause in this court, and that said appellants have execution for the enforcement thereof.

Dated and signed this 26th day of July, 1901.

By the court,

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

Statement for Judgment.

Costs allowed by statute	$25.00
Clerk's fees, for making return	
Printer's fees	13.50
Clerk's fees, supreme court	10.00
Filing mandate	
Affidavits and acknowledgments	.25
Postage	.29
Copying returns for printer	
	$49.04

73 [Endorsed:] 12645 State of Minnesota, supreme court. Northern Pacific Railway Company respondent *vs.* Abner Townsend *et al.* appellants. Transcript of judgment. Filed July 26th A. D. 1901. D. F. Reese clerk.

STATE OF MINNESOTA, *ss:*

Supreme Court.

I, D. F. Reese, clerk of said supreme court, do hereby certify that the foregoing is a full and true copy of the entry of judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and the seal of said supreme court at the capitol in the city of St. Paul, this 26th day of July A. D. 1901.

D. F. REESE, *Clerk.*

74 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1901.

NORTHERN PACIFIC RAILWAY COMPANY, Respondent, vs. ABNER TOWNSEND, MINERVA TOWNSEND, and Joseph Holacek, Appellants. } No. 173. Appeal from District Court, Seventh Judicial District, County of Wadena.

This cause having been duly argued and submitted at the general April term of this court, A. D. 1901, upon the return to the appeal herein.

Now after full and mature deliberation had thereon, it is here and hereby ordered that the judgment of the court below, herein appealed from, be and the same hereby is, in all things reversed, and upon remittitur, judgment may be entered in favor of the defendants and that the appellants above named have judgment accordingly.

Entered July 26 A. D. 1901.

By the court.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE *Clerk.*

I hereby certify that the foregoing is a full and true copy of the original order for judgment entered in the above-entitled cause.

Attest: D. F. REESE *Clerk.*

75 [Endorsed:] No. 12643 State of Minnesota, supreme court. Copy of order for judgment. Filed July 26 A. D. 1901 D. F. Reese clerk. Entered on page —.

76 STATE OF MINNESOTA:

Supreme Court, General April Term, A. D. 1901.

THURSDAY MORNING, 9.30 O'CLOCK, *June* 20, *A. D.* 1901.

Court convened pursuant to adjournment. All the justices being present.

NORTHERN PACIFIC RAILWAY COMPANY, Respondent, vs. ABNER TOWNSEND, MINERVA TOWNSEND, and Joseph Holacek, Appellants. } Cal. No. 173. Reg. No. 12645.

This cause came on to be heard this day upon the return to the appeal herein.

Thereupon the same was argued by counsel for appellant submitted upon brief by respondent and taken under advisement by the court.

A true record.

[Seal of the Supreme Court, State of Minnesota.]

Attest: D. F. REESE, *Clerk.*

The foregoing is a full and true copy of the minutes of argument in the above-entitled cause.

Attest: D. F. REESE *Clerk.*

77 [Endorsed:] 12645 State of Minnesota supreme court. Copy of minutes of argument. Filed July 26 A. D. 1901. D. F. Reese, clerk.

78 [Endorsed:] No. 12645 State of Minnesota, supreme court. Northern Pacific Railway Company respondent against Abner Townsend *et al.* appellants Judgment-roll. Filed July 26th 1901 D. F. Reese clerk.

79 STATE OF MINNESOTA:

Supreme Court.

STATE OF MINNESOTA, *Office of Clerk of Supreme Court,* } ss:

I, Darius F. Reese, clerk of the supreme court, State of Minnesota, do hereby certify and return to the Supreme Court of the United States that the foregoing and annexed transcript of record is a full and complete transcript of the record, and all proceedings with all things concerning same had in the said supreme court of the State of Minnesota in the case between The Northern Pacific Railway Company, respondent, and Abner Townsend, Minerva Townsend and Joseph Holacek, appellants, including the opinion of the said supreme court therein as appears from the original files and records:

And I do further certify and return that I have annexed to said transcript and included therewith, and that the foregoing are, copies of the petition for writ of error with allowance of same and of the assignments of error and of the bond as the same remain on file and of record in said supreme court of the State of Minnesota and are the original writ of error from the Supreme Court of the United States and the original citation issued thereon, with proof of service thereof, and that the foregoing constituted a true full and complete return to said writ of error.

80 In witness whereof I have hereunto set my hand and the seal of said supreme court of the State of Minnesota at the capitol at St. Paul, Minnesota, this 21st day of August, A. D. 1901.

[Seal of the Supreme Court, State of Minnesota.]

D. F. REESE,
Clerk of the Supreme Court, Minnesota,
By J. L. HELM, *Deputy.*

81 [Endorsed:] State of Minnesota, supreme court. Northern Pacific Railway Company appellant *vs.* Abner Townsend *et al.* respondents Return to U. S. Supreme Court.

Endorsed on cover: File No. 18,260. Minnesota supreme court. Term No. 160. The Northern Pacific Railway Company, plaintiff in error, *vs.* Abner Townsend, Minerva Townsend & Joseph Holecek. Filed September 6th, 1901.